

DEC 12 2005

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARK JOSEPH GOBLE, aka Mark
James Goble,

Defendant - Appellant.

No. 03-30473

D.C. No. CR-00-00126-JDS

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Jack D. Shanstrom, District Judge, Presiding

Submitted December 5, 2005**

Before: GOODWIN, W. FLETCHER and FISHER, Circuit Judges.

Mark Joseph Goble appeals his resentencing on remand from a prior appeal from his jury-trial conviction for manufacturing methamphetamine, in violation of 21 U.S.C. § 841(a)(1). We have jurisdiction pursuant to 28 U.S.C. § 1291.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Goble contends that the district court erred in ordering restitution. We reject Goble's challenges to the legality of the restitution order. *See* 21 U.S.C. § 853(q) (2000) (providing that a district court sentencing a defendant convicted of manufacturing methamphetamine may order restitution for the costs incurred by the government for cleanup). Further, the record reflects that the district court adequately considered Goble's future ability to pay. *See United States v. Bachsian*, 4 F.3d 796, 800 (9th Cir. 1993). Accordingly, we affirm the restitution order.

Goble is, however, entitled to remand pursuant to *United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir. 2005) (en banc). Although we would normally grant a limited remand pursuant to *Ameline*, we vacate the original sentence and remand for a full resentencing hearing because the district court judge in this case is no longer available. *See United States v. Sanders*, 421 F.3d 1044, 1051-52 (9th Cir. 2005). If Goble does not want to pursue resentencing, he should promptly notify the district court judge on remand. *See Ameline*, 409 F.3d at 1084.

AFFIRMED in part and VACATED and REMANDED in part.